

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:2

PLR-120932-15

Date:

March 01, 2016

### Legend

Distributing 3 =

Distributing 2 =

Distributing 1 =

Corp =

LLC =

PRS =

PLR-120932-15

2

DRE

=

SplitCo

=

Business

=

Preferred Stock

=

Asset Type 1

=

Asset Type 2

=

Provision 1

=

Provision 2 =

Own =

Regulation =

Agreement =

Regulatory Constraint =

Advisor =

Event =

Governing Document =

a =

b =

c =

d =

e =

f =

g =

h =

i =

m =

k =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to your letter dated June 16, 2015, submitted by your authorized representatives, requesting rulings under sections 355 and 361 of the Internal Revenue Code (Code) and related regulations with respect to the Proposed Transaction (described below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, regarding one or more significant issues under sections 332, 351, 355, 368, or 1036. The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

### **Summary of Facts**

Distributing 3 is a widely held, publicly traded corporation and the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the Distributing 3 Group). Distributing 3 owns all the stock of Distributing 2, a corporation. Distributing 2 owns all the common stock of Distributing 1, a corporation. Distributing 3 owns all the Preferred Stock of Distributing 1, the value of which is less than a percent of the aggregate value of Distributing 1's outstanding stock. As of Date 1, Distributing 2 owned b (more than 20) percent of the stock of Corp, a corporation. Distributing 1 owns (i) the sole interest in DRE, a limited liability company that is disregarded for U.S. federal income tax purposes; (ii) a c-percent interest in LLC, a limited liability company that is a partnership for U.S. federal income tax purposes; and (iii) a d-percent limited partnership interest in PRS, a partnership. LLC owns an e-percent general partnership interest in PRS. The remaining interests in LLC and PRS are held by entities that are unrelated to any member of the Distributing 3 Group.

Distributing 1, directly and through DRE, will have been engaged in the active conduct of the Business throughout the five-year period ending on the date of the Initial Exchange (defined below). As of Date 2, with respect to the Business, and Date 3, with respect to Distributing 2's stock of Corp, the aggregate gross fair market value of the Business was approximately m (10 or more) percent of the fair market value of the stock of Corp owned by Distributing 2.

Corp, Distributing 3, and Distributing 2 have entered into the Agreement, which obligates Distributing 2 to transfer to Corp a certain number of shares of Corp stock to partially fund awards to officers and employees as part of a long-term stock incentive plan that permits Corp to, among other things, attract and retain employees of outstanding ability.

Because of recently imposed Regulatory Constraint, which restricts Distributing 3's ability to acquire assets related to its core businesses, such as Asset Type 1 and Asset Type 2, Distributing 3 proposes to carry out the Proposed Transaction, described below.

### **Proposed Transaction**

The Proposed Transaction will include the following steps (each, a Step). To the extent the order of the Steps is neither relevant to any requested ruling nor otherwise explicitly stated as between specific Steps or a series of Steps, Steps may occur in an order different from the order set forth below:

- (1) Distributing 1 will form a new corporation (HoldCo).
- (2) Distributing 1 will contribute to HoldCo (i) its c-percent interest in LLC and (ii) its d-percent limited partnership interest in PRS, in actual or constructive exchange for all the stock of HoldCo.
- (3) Distributing 1 will distribute all the stock of HoldCo to Distributing 2.
- (4) Distributing 2 will form a new entity that will be a corporation for U.S. federal income tax purposes (SplitCo). SplitCo will incorporate into its Governing Document Provision 1 and Provision 2.
- (5) Distributing 2 will contribute to SplitCo (i) its stock of Corp and (ii) all the stock of HoldCo, in actual or constructive exchange for all the stock of SplitCo. SplitCo will agree to satisfy Distributing 2's obligations under the Agreement.
- (6) Distributing 1 (directly and through DRE) will sell to SplitCo all the assets of the Business (or the sole interest in a limited liability company to be formed that will be disregarded for U.S. federal income tax purposes that will own all such assets) and all personnel of the Business in exchange for an amount of cash equal to the fair market value of the Business, which will be funded through a borrowing from one or more third-party lenders.
- (7) Distributing 2 will distribute all the stock of SplitCo to Distributing 3 (the SplitCo Distribution).

- (8) Distributing 3 will distribute no less than f (more than 80) percent of the stock of SplitCo to the Distributing 3 shareholders through an initial exchange of shares of SplitCo for shares of Distributing 3 (the Initial Exchange).
- (9) In the event Distributing 3 does not distribute all the stock of SplitCo in the Initial Exchange, Distributing 3 will dispose of any remaining shares of SplitCo stock (Remaining SplitCo Shares) during the g months following the Initial Exchange as follows:
  - (i) Distributing 3 would expect to undertake one or more offers to exchange all the Remaining SplitCo Shares for shares of Distributing 3 (each, a Subsequent Exchange, and collectively with the Initial Exchange, the External Split-Off).
  - (ii) If the External Split-Off is undersubscribed, any Remaining SplitCo Shares that are not disposed of will be (a) transferred to one or more third-party creditors of Distributing 3 (each, a Stock-for-Debt Exchange), (b) disposed of through one or more sales or exchanges, and/or (c) distributed to Distributing 3's shareholders (a Clean-Up Spin-Off) (Steps 8 and 9, collectively, the Separation).

### **Representations**

Distributing 3 makes the following representations with regard to the Proposed Transaction:

- (a) Distributing 3 expects to distribute all the stock of SplitCo to the Distributing 3 shareholders in the Initial Exchange.
- (b) Based in part upon the shareholder composition of Distributing 3, substantial relevant market data for tender offers comparable to the External Split-Off, and the existence of a minimum condition for the tender offer that Distributing 3 will distribute no less than f percent of the stock of SplitCo to the Distributing 3 shareholders in the Initial Exchange, Distributing 3 believes and expects that, in accordance with the written opinion of Advisor, at least k percent of the stock of SplitCo will be represented by the sum of the shares: (i) distributed in the External Split-Off to Distributing 3 shareholders who, as a result of their tenders in the External Split-Off, would be entitled to sale or exchange treatment if section 355 were not applicable to the External Split-Off; (ii) distributed in the Separation to Distributing 3 shareholders that are exempt from taxation under the Code; (iii) transferred in a Stock-for-Debt Exchange; and (iv) sold by Distributing 3 in a taxable transaction.

- (c) As long as Distributing 3 owns any Remaining SplitCo Shares, none of Distributing 3's (or its affiliates') directors or officers will serve as directors or officers of SplitCo (or its affiliates).
- (d) Distributing 3 will vote any Remaining SplitCo Shares in proportion to the votes cast by SplitCo's other shareholders.
- (e) Until Date 4, Corp will not Own (as such term is used in the Regulation) h percent or more of SplitCo's aggregate outstanding stock.
- (f) Until Date 4, SplitCo will not Own (as such term is used in the Regulation) i percent or more of Corp's aggregate outstanding stock (Corp Prohibited Stock Interest).
- (g) Until Date 4, SplitCo will not enter into any transaction, arrangement, or understanding pursuant to which Corp, directly or to SplitCo's knowledge indirectly, will acquire any of SplitCo's assets or any SplitCo stock. For this purpose, (i) sales or issuances in the open market, (ii) transfers pursuant to the Agreement, and (iii) the Event will not be taken into account.
- (h) Until Date 4, SplitCo will not enter into any transaction, arrangement, or understanding pursuant to which SplitCo will: (i) merge or combine with Corp; (ii) directly or indirectly acquire any of Corp's assets, provided that, for purposes of this clause (ii), neither the Event nor an acquisition of assets on the open market will be taken into account; (iii) directly or indirectly acquire any additional Corp stock or any interest in Corp stock, provided that, for purposes of this clause (iii), the Event will not be taken into account; or (iv) directly or indirectly acquire a Corp Prohibited Stock Interest.
- (i) At the time of the Initial Exchange (and in the event there are Remaining SplitCo Shares, through the date that Distributing 3 disposes of the last of the Remaining SplitCo Shares pursuant to the Separation), neither Distributing 3 nor SplitCo will have any plan or intent for SplitCo to:
  - (i) Own (as such term is used in the Regulation) at any time in the future a Corp Prohibited Stock Interest or
  - (ii) be a party at any time in the future to any transaction, arrangement, or understanding described in Representation (g) or (h).

### **Rulings**



Based solely on the information submitted and representations made, we rule as follows with regard to the Proposed Transaction:

- (1) The relative fair market value of the gross assets of the Business as compared to the fair market value of SplitCo will not prevent the Business from qualifying as an active trade or business for purposes of section 355(b) with respect to each of the SplitCo Distribution and the External Split-Off.
- (2) Distributing 3's continuing ownership of any Remaining SplitCo Shares until their disposition described in Step (9) will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(1)(D)(ii).
- (3) Provided the Initial Exchange otherwise meets the requirements of section 355, any Subsequent Exchange, Stock-for-Debt Exchange, or Clean-Up Spin-Off will be treated as a distribution in pursuance of the same plan as the Initial Exchange and will qualify for nonrecognition treatment under section 355 and/or section 361 to the same extent such stock transfer would have qualified had it occurred on the same date as the Initial Exchange.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings.

### **Procedural Statements**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representatives.

Sincerely,

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Stephanie D. Floyd  
Assistant to Branch Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: